

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF SETTLEMENT

Please print or type required information

Original Filing Supplemental Filing Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S) Shefa LMV Inc.			
	DEFENDANT(S) INVOLVED IN SETTLEMENT OOLY LLC			
CASE INFO	COURT DOCKET NUMBER BC665581		COURT NAME Los Angeles County Superior Court	
	SHORT CASE NAME Shefa v. OOLY LLC			
REPORT INFO	INJUNCTIVE RELIEF Reformulation and/or Warning label			
	PAYMENT: CIVIL PENALTY \$2,000	PAYMENT: ATTORNEYS FEES \$12,000	PAYMENT: OTHER 0.00	
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL	DATE SETTLEMENT SIGNED 6 / 28 / 2017	
	COPY OF SETTLEMENT MUST BE ATTACHED			
FILER INFO	NAME OF CONTACT Daniel N. Greenbaum			
	ORGANIZATION Law Office of Daniel Greenbaum		TELEPHONE NUMBER (818) 809-2199	
	ADDRESS 7120 Hayvenhurst Ave., Suite 320		FAX NUMBER (424) 243-7698	
	CITY Van Nuys	STATE ZIP CA 91406	E-MAIL ADDRESS dgreenbaum@greenbaumlawfirm.com	

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

1 LAW OFFICE OF DANIEL N. GREENBAUM
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4 Telephone: (818) 809-2199
Facsimile: (424) 243-7689
5 Email: dgreenbaum@greenbaumlawfirm.com

6 Attorney for Plaintiff SHEFA LMV, INC.

7
8 Stuart Blake, Esq.
OOLY LLC
9 3923 Oceanic Dr., Suite 100
Oceanside CA 92056
10 Telephone: (760) 231-7603
11 Facsimile: (760) 231-7604
Email: stuart@ooly.com

12 Attorneys for Defendant OOLY LLC

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF LOS ANGELES

16
17 SHEFA LMV, INC.,)

18 Plaintiff,)

19 vs.)

20 OOLY LLC; and DOES 1 through 100,)
Inclusive,)

21 Defendants.)
22)
23)
24)

Case No. BC665581

**[PROPOSED] CONSENT JUDGMENT
AS TO OOLY LLC**

Action Filed: June 19, 2017

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This consent judgment (“**Consent Judgment**”) is entered into by and between plaintiff
4 Shefa LMV, Inc. (“**Shefa**” or “**Plaintiff**”) and OOLY LLC (“**OOLY**” or “**Defendant,**” with Shefa
5 and OOLY individually referred to as a “**Party**” and collectively as the “**Parties.**”)

6 **1.2 Plaintiff**

7 Shefa is a public benefit non-profit corporation that seeks to promote awareness of
8 exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 substances contained in consumer products.

10 **1.3 Settling Defendant**

11 OOLY employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 §25249.6 *et seq.* (“**Proposition 65**”).

14 **1.4 Products Covered**

15 The products covered by this Consent Judgment are plastic purse products, including but not
16 limited to Make Notes® Pencil Pouch; with an identifying designation of UPC: 879426007005, that
17 are manufactured, sold, or distributed for sale in California by OOLY that contain Di-isodecyl
18 Phthalate (“**DIDP**”) and Diisononyl Phthalate (“**DINP**”) (collectively, the “**Covered Products**”)
19 without first providing a clear and reasonable warning as required by Proposition 65.

20 **1.5 General Allegations**

21 Shefa alleges that OOLY manufactures, imports, sells, or distributes, for sale in the state of
22 California, plastic purse products that contain DIDP and DINP without first providing a clear and
23 reasonable warning required by Proposition 65. DIDP (CAS # 68515-48-0) is a chemical listed
24 under Proposition 65 as a chemical known to the state to cause reproductive toxicity as Proposition
25 65 defines that term. 27 CCR §25000. DINP (CAS # 28553-12-0) is a chemical listed under
26 Proposition 65 as a chemical known to the state to cause cancer as Proposition 65 defines that term.
27 27 CCR §25000 OOLY denies these allegations.

1 **1.6 Notice of Violation**

2 On April 6, 2017, Shefa served Defendant and the requisite public enforcement agencies
3 with a 60-Day Notice of Violation alleging that Defendant violated Proposition 65 when it failed to
4 warn its customers and consumers in California that the Covered Products expose users to DIDP
5 and DINP. To the best of the Parties’ knowledge, no public enforcer has commenced and is
6 diligently prosecuting the allegations set forth in the Notice.

7 **1.7 Complaint**

8 On June 19, 2017, Shefa filed the instant complaint in the Superior Court in and for the
9 County of Los Angeles against OOLY and DOES 1-100, alleging violations of California Health &
10 Safety Code § 25249.6, based on exposures to DIDP and DINP contained in the covered products
11 sold in the State of California (the “**Complaint**”).

12 **1.8 No Admission**

13 OOLY denies the material, factual, and legal allegations contained in the Notice and
14 Complaint and maintains that all the products it has manufactured, sold, or distributed for sale in
15 California, including the Covered Products, have been, and are, in compliance with all laws.
16 Nothing in this Consent Judgment shall be construed as an admission by OOLY of any fact, finding,
17 conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent
18 Judgment constitute or be construed as an admission by OOLY of any fact, finding, conclusion of
19 law, issue of law, or violation of law, the same being specifically denied by OOLY. This section
20 shall not, however, diminish or otherwise affect OOLY’s obligations, responsibilities, and duties
21 under this Consent Judgment.

22 **1.9 Consent to Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the
25 County of Los Angeles, the Defendant agrees that it employs or has employed ten or more persons
26 during time periods relevant to the Complaint and that this Court has jurisdiction over the Parties to
27 enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65.

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “**Effective Date**” shall mean the date the
3 Consent Judgment is approved and entered by the Court.

4 **2. INJUNCTIVE RELIEF: COMPLIANT PRODUCTS AND WARNINGS**

5 **2.1 Reformulation Standards. As of the Effective Date, Defendant shall only**
6 **manufacture, distribute, or sell Compliant Products in California. “Compliant Products” are**
7 **defined as those Products containing the Listed Chemical in concentrations less than or equal**
8 **to 1000 parts per million (“ppm”) (0.1%) when analyzed pursuant to a scientifically reliable**
9 **application of U.S. Environmental Protection Agency testing methodologies 3580A and 8270C**
10 **or any other scientifically reliable methodology for determining the Listed Chemical content**
11 **in a substance of the form of the Covered Products herein.**

12 **2.2 Warning Standards. Defendant agrees, promises, and represents that, as of**
13 **the Effective Date, to the extent it ships or sells products that are not Compliant Products,**
14 **Defendant will provide warnings on such Covered Products that comply with Proposition 65.**
15 **The warnings shall be provided in such a conspicuously and prominent manner that will**
16 **assure the message is made available and likely to be read, seen, or heard by the consumer**
17 **prior to or at the time of the sale or purchase.** The Parties agree that product labeling stating one
18 of the following shall constitute compliance with Proposition 65 with respect to any Covered
19 Products not reformulated:

20 “**WARNING:** This product contains chemicals known to the State of California to
21 cause cancer, birth defects or other reproductive harm.”

22 Or

23 “  **WARNING:** This product can expose you to chemicals including Di-isodecyl
24 Phthalate (“DIDP”) and Diisononyl Phthalate (“DINP”) which are known to the State of
25 California to cause cancer, birth defects or reproductive harm. For more information go
26 to www.P65Warnings.ca.gov.”

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Payment from Defendant.** Within ten (10) business days of the Effective Date,
3 Defendant shall make the Total Settlement Payment of **\$14,000.00**.

4 **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three (3)
5 separate checks made payable and allocated as follows:

6 **3.2.1 Civil Penalty.** Defendant shall pay \$2,000.00 as a civil penalty
7 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in
8 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
9 California’s Office of Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the
10 OEHHA portion of the civil penalty payment in the amount of \$1,500.00 shall be made payable to
11 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
12 delivered as follows:

13 For United States Postal Service Delivery:

14 Attn: Mike Gyurics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 P.O. Box 4010, MS #19B
18 Sacramento, CA 95812-4010

19 For Non-United States Postal Service Delivery:

20 Attn: Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 1001 I Street, MS #19B
24 Sacramento, CA 95814

25 The Shefa portion of the civil penalty payment in the amount of \$500.00 shall be made
26 payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002.
27 This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst
28 Ave, Suite 320, Van Nuys, CA 91406.

3.2.2 Attorney’s Fees and Costs. A reimbursement of Shefa's attorney’s
fees and costs in the amount of \$12,000.00 payable to the “Law Office of Daniel N. Greenbaum,”

1 and associated with taxpayer identification number 46-4580172. This payment shall be delivered to
2 the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

3 **4. CLAIMS COVERED AND RELEASED**

4 **4.1 Shefa’s Public Release of OOLY and its Downstream Releasees**

5 This Consent Judgment is a full, final, and binding resolution between Shefa and OOLY of
6 any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf of
7 itself and in a representative capacity in the public interest under Health & Safety Code § 25249.7,
8 against OOLY, its parents, subsidiaries, affiliated entities under common ownership, manufacturers,
9 suppliers, directors, officers, employees, attorneys, and the predecessors, successors, or assigns of
10 each of them, and each entity to whom OOLY directly or indirectly exports, distributes or sells the
11 Covered Products, including, without limitation, downstream distributors, wholesalers, customers,
12 retailers, franchisees, cooperative members, and licensees, including but not limited to Blick Art
13 Materials (“**Releasees**”), based on failure to warn of alleged exposures to DIDP and DINP from
14 Covered Products manufactured, sold, exported or distributed for sale in California by OOLY prior
15 to the Effective Date. The release in this Section 4.1 applies to all Covered Products that OOLY
16 manufactured, exported, distributed, or sold prior to the Effective Date, regardless of the date any
17 other Releasee distributes or sells the Covered Products.

18 Upon entry of this Consent Judgment by the Court, going forward, OOLY’s compliance
19 with the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition
20 65 by OOLY or any other Releasee with respect to DIDP and DINP in Covered Products
21 manufactured, sold, or distributed for sale in California by OOLY on and after the Effective Date.

22 **4.2 Shefa’s Individual Release of Claims**

23 In further consideration of the promises and agreements herein contained, Shefa, on its own
24 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or
25 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of
26 legal action, and releases all claims that it may have against OOLY and Releasees, including,
27 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,
28

1 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert
2 fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DIDP and DINP
3 from Covered Products manufactured, sold, or distributed for sale in California by OOLY prior to
4 the Effective Date. The releases in Section 4.2 are provided in Shefa's individual capacity and are
5 not releases on behalf of the public.

6 **4.3 OOLY's Release of Shefa**

7 OOLY, on its own behalf and on behalf of its past and current agents, representatives,
8 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
9 Shefa and its attorneys and other representatives, for any and all actions taken or statements made
10 by Shefa and its attorneys and other representatives, whether in the course of investigating claims,
11 otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered
12 Products.

13 **4.4 Release of Unknown Claims**

14 It is possible that other claims not known to the Parties arising out of the facts contained in
15 the 60-Day Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be
16 discovered or developed. Shefa, on behalf of itself only, on the one hand, and OOLY, on the other
17 hand, acknowledge that this Consent Judgment is expressly intended to cover and include all such
18 claims through and including the Effective Date, including all rights of action therefor. Shefa and
19 OOLY acknowledge that the claims released in Section 4 may include unknown claims, and
20 nevertheless intend to release such claims, and in doing so waive California Civil Code § 1542,
21 which reads as follows:

22 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
23 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR**
24 **AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
25 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
26 **WITH THE DEBTOR.**

27 Shefa understands and acknowledges that the significance and consequence of this waiver of
28 California Civil Code § 1542 is that, even if Shefa suffers future damages arising out of or resulting
from, or related directly or indirectly to, in whole or in part, the Covered Products, including but not

1 limited to any exposure to, or failure to warn with respect to exposure to, the Covered Products,
2 Shefa will not be able to make any claim for those damages against any of the Releasees.

3 **5. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the Court and
5 shall be null and void if, for any reason, it is not approved and entered by the Court within ninety
6 (90) days after it has been fully executed by the Parties, or by such additional time as the Parties
7 may agree in writing.

8 **6. SEVERABILITY**

9 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
10 Judgment is held by a court to be void or unenforceable, or the Parties agree to modify any terms
11 due to comments from the Office of the Attorney General or after a hearing before the Court in
12 connection with Shefa's Motion to Approve, or for other good cause, each Party to be bound by any
13 such modified terms must re-execute the modified Consent Judgment and such modified Consent
14 Judgment then shall be presented by Shefa to the Court for approval; provided, however, that if a
15 provision of this Consent Judgment declared void or unenforceable is material to the Party for
16 whom such term provided a benefit or protection, that Party can seek other remedies, including,
17 without limitation, rescission or reformation, based on the provision being declared void or
18 unenforceable.

19 **7. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of California
21 and apply within the State of California. DIDP is listed pursuant to Proposition 65 as a chemical
22 that is known to the State of California to cause reproductive toxicity. DINP is listed pursuant to
23 Proposition 65 as a chemical that is known to the State of California to cause cancer. In the event
24 that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or
25 as to the Covered Products, including without limitation the delisting of DIDP and DINP, then
26 OOLY may provide written notice to Shefa of any asserted change in the law, and with the
27 exception of Sections 3.1 and 3.2 above, have no further obligations pursuant to this Consent
28

1 Judgment, with respect to, and to the extent that, the Covered Products are so affected. None of the
2 terms of this Consent Judgment shall have any application to Covered Products sold outside of the
3 State of California.

4 **8. NOTICE**

5 Unless specified herein, all correspondence and notices required to be provided pursuant to
6 this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class,
7 registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any
8 Party by the other at the following addresses:

9 To OOLY:

10 Stuart Blake, Esq.
11 OOLY LLC
12 3923 Oceanic Dr., Suite 100
Oceanside CA 92056

To Shefa:

Daniel N. Greenbaum
Law Office of Daniel N. Greenbaum
7120 Hayvenhurst Ave., Suite 320
Van Nuys, CA 91406

13 Any Party may, from time to time, specify in writing to the other Party a change of address to which
14 all notices and other communications shall be sent.

15 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

16 This Consent Judgment may be executed in counterparts, and by facsimile or portable
17 document format (PDF) signature, each of which shall be deemed an original, and all of which,
18 when taken together, shall constitute one and the same document.

19 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

20 Plaintiff agrees to comply with the reporting form requirements referenced in California
21 Health & Safety Code § 25249.7(f).

22 **11. POST EXECUTION ACTIVITIES**

23 **11.1** The Parties acknowledge that, pursuant to California Health & Safety Code
24 § 25249.7(f), Shefa is obligated to file a noticed motion to obtain judicial approval of this Consent
25 Judgment. Upon the Parties' execution of this Consent Judgment, Shefa promptly shall proceed to
26 submit this Consent Judgment to the Court with a motion seeking Court approval.

1 **12. MODIFICATION**

2 **12.1** In the event that any future settlement agreement or court approved consent
3 judgment entered into by Shefa involving another party, or any future court-approved consent
4 judgment entered into by any enforcer of Proposition 65 involving another party, sets out a
5 reformulation or compliance standard that is less stringent than that in Section 2.1 above for DIDP
6 and DINP in substantially similar plastic purse products, then upon written notice to Shefa, OOLY
7 is entitled to a corresponding modification to the corresponding standard set forth in section 2.1 of
8 this Consent Judgment, with regard to the Covered Products.

9 **12.2** In the event OEHHA re-establishes the safe harbor No-Significant Risk Level
10 (“NSRL”) for DIDP and DINP, which OOLY asserts would allow for the Covered Products to
11 contain levels of DIDP and DINP in amounts greater than those set forth above in Section 2.1, then
12 OOLY may provide written notice to Shefa of any such assertion and the Parties shall confer within
13 30 days to attempt to agree upon modification of this Consent Judgment. Should such attempts at
14 informal resolution of a modification fail, and in the event OOLY still intends to change its
15 reformulation obligations, OOLY will provide written notice to Shefa of its intent to adopt a
16 modified compliance standard. Upon receipt of OOLY’s notice, Shefa shall have the right to
17 enforce the terms and conditions contained in the Consent Judgment by motion or any other
18 available remedy at law, with the sole issue to be adjudicated being the technical question of
19 whether the NSRL would allow for a higher DIDP and DINP content in the Covered Products than
20 that set forth in Section 2.1.

21 **12.3** This Consent Judgment may only be modified by a written instrument executed by
22 the Party or Parties to be bound thereby, and after approval by the Court upon a noticed motion.
23 Any motion to modify shall be served on all Parties and the Office of the Attorney General.

24 **13. DISPUTE RESOLUTION**

25 If Shefa determines at a future date that a violation of this Consent Judgment has occurred,
26 Shefa shall provide notice to OOLY. Prior to bringing any action to enforce any requirement of this
27 Consent Judgment, the party alleging a violation of this Consent Judgment shall provide the other
28

1 party with written notice of the grounds for such allegation together with all supporting information
2 as well as a complete demand for the relief sought. The Parties shall then meet and confer
3 regarding the basis for the allegation in an attempt to resolve the matter informally, including
4 providing the party alleged to be in violation with a reasonable opportunity of at least thirty (30)
5 days to cure any alleged violation. Should such attempts at informal resolution fail, the party
6 alleging a violation may file its lawsuit seeking the proposed relief.

7 **14. AUTHORIZATION**

8 The undersigned are authorized to execute this Consent Judgment on behalf of their
9 respective Parties and have read, understood and agree to all of the terms and conditions of this
10 Consent Judgment.

11
12 **AGREED TO:**

AGREED TO:

13
14 Date: 6/28/2017

Date: June 27, 2017

15
16
17 By: 

SHEFA LMV, INC.

18 By: 

OOLY LLC

1 **[PROPOSED] JUDGMENT**

2
3 Please note that on August 30, 2017 at 8:30am, Plaintiff Shefa LMV Inc.’s (“Plaintiff”) Motion
4 for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant OOLY
5 LLC came on for hearing before this Court in Department 73, the Honorable Rafael Ongkeko presiding.
6 Counsel for Plaintiff did [not] appear; counsel for Defendant did [not] appear.

7 After full consideration of the points and authorities and related pleadings submitted, the Court
8 GRANTED Plaintiff’s Motion pursuant to and in accordance with Health & Safety Code
9 §25249.7(f)(4). The Court reviewed the above Settlement Agreement and makes the following
10 findings pursuant to Health & Safety Code § 25249.7(f)(4):

- 11 a. The injunctive relief required by the Settlement Agreement complies with Health &
12 Safety Code § 25249.7;
- 13 b. The reimbursement of fees and costs to be paid pursuant to the Settlement
14 Agreement is reasonable under California law; and
- 15 c. The civil penalty amount to be paid pursuant to Settlement Agreement is reasonable.
16

17 The Settlement Agreement is hereby approved, and the clerk is directed to ENTER
18 JUDGMENT in accordance with the terms of the Settlement Agreement above.
19

20 _____
21 Date

20 _____
21 Superior Court Judge